TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~417.~~ 182

WILLIAM E. ADGER, ADMINISTRATOR OF JOHN ADGER, DECEASED, PLAINTIFF IN ERROR,

vs.

WILLIAM S. ALSTON, EXECUTOR OF WILLIAM J. ALSTON, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED NOVEMBER 27, 1871.

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1 United States circuit court, fifth circuit, and district of Louisiana.

W'M J. ALSTON
vs.
W'M E. ADGER, ADMINISTRATOR OF JOHN Adger. } No. 5457.

Petition.—Filed February 20th, 1868.

To the honorable the judges of the circuit court of the United States in and for the fifth circuit, & district of Louisiana:

The petition of William J. Alston, trustee of Mrs. John B. McCall, respectfully shows:

That he is a citizen of the State of South Carolina, as is also said Mrs. John B. McCall; that he is holder and owner, as trustee aforesaid, of a bond signed by John Adger, William H. Ellison, and James B. M. Couts, for the sum of nine thousand dollars, penal, conditional that said John Adger should pay or cause to be paid, the sum of four
2 thousand five hundred dollars on the first of January, 1858, with interest thereon, at the rate of seven per cent. per annum, as allowed by the laws of South Carolina, the place of contract, said bond being signed the fourth day of November, 1856; that said interest has been paid to the first of January, 1863—all which will appear by said bond, annexed for reference and made part of this petition; that said John Adger, deceased, being a citizen of Louisiana; that his estate is under administration in the parish of Bossier, and William E. Adger is administrator thereof; that he refuses to recognize said bond or pay the same; that said William E. Adger is citizen of the State of Louisiana.

Wherefore petitioner prays that said William E. Adger, administrator aforesaid, be cited, and, after due proceedings, condemned to pay the petitioner the said sum of nine thonsand dollars with interest at seven per cent. per annum, from 1st day of January, 1863, with costs of suit; and petitioners ask for general relief.

(Signed) CLARKE & BAYNE,
For Pet'r.

3 *Bond.—Filed with petition Feb'y 20th*, 1868.

THE STATE OF SOUTH CAROLINA:

Know all men by these presents that we, John Adger, William H. Ellison, and James B. M. Couts, are held and firmly bound unto William J. Alston, trustee of Mrs. John B. McCall, in the *final* sum of nine thousand dollars. good and lawful money of the said State, to be paid unto the said William J. Alston, his executors, administrators, or assignees, which payment well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators, for the whole, and in the whole, jointly and severally, firmly by these presents, signed by us and sealed with our seals this fourth day of November, one thonsand eight hundred and fifty-six.

Now, the condition of the above obligation is such, that if the above-bound John Adger should well and truly pay or cause to be paid
4 unto the said William J. Alston, the sum of four thousand five hundred dollars on the first of January, 1858, with interest thereon from the 1st of January, 1857, the interest on the above

amount to be paid annually, until the principal is paid, then the obligations above written to be null and void; otherwise to remain in full force and virtue.

(Signed) JOHN ADGER.
(Signed) WILLIAM E. ELLISON.
(Signed) JAMES B. M. COUTS.

Endorsements on above bond.

Received on the within bond, November 11th, 1857, by the hand of R. L. Bryan, three hundred and fifteen dollars for one year's interest on the same, said interest being due on 4th inst.

(Signed) W'M J. ALSTON.

Rec'd on the within bond as on 4th Nov., 1858, by the hand of R. L. Bryan, three hundred and fifteen dollars for one year's interest on the same.

(Signed) W'M J. ALSTON.

5 This bond is entitled to a credit of one year's interest up to 4th Nov., 1859, paid by John Adger to J. B. McCall, for which he (Mr. Adger) holds a receipt. This bond is entitled to an additional credit of W. J. Alston, interest due for one year up to 4th Nov., 1860.

(Signed) W. J. ALSTON.

Rec'd one hundred and fifty-seven dollars and fifty cents, the amount of interest due on the within bond up to July, 1861.

(Signed) W. J. ALSTON.

Received four hundred and seventy-two dollars and fifty cents, interest due up to 1st of January, 1863. February 2d, 1863.

(Signed) W. J. ALSTON.

Citation.—Issued 20th Feb'y, 1868.

The President of the United States of America to the marshal of the district of Louisiana, greeting:

6 W'M J. ALSTON
vs.
W'M E. ADGER, ADMINISTRATOR OF John Adger. } No. 5457.

You are hereby commanded to summon William E. Adger, administrator of the estate of John Adger, deceased, a citizen of the State Louisiana, to comply with the demand of William J. Alston, trustee of Mrs. John B. McCall, citizens of the State of South Carolina, contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New *New* Orleans, the place where the court is held; and that you
7 make due return here'f on the first Monday of March, 1868.

Witness the Honorable Salmon P. Chase, Chief Justice of the

Supreme Court of the United States of America, at the city of New Orleans, this 20th day of Feb'y, A. D. one thousand eight hundred and sixty-eight, and of the independence of the United States of America the 92d year.

[SEAL.] (Signed) D. URBAN, *Clerk*,
(Signed) By F. B. VINOT, *D'y Clerk.*

Marshal's return thereon.

Rec'd Feb'y 21st, 1868, by the United States marshal, and on 29 day of Feb'y, 1868, served copy of within citation, pl't'ff's petition accompanying same, on W'm E. Adger, def't named herein, personally, at his domicil on Old River, State of Louisiana, 25 miles from Shreve-
8 port, and 725 miles distant from this city. New Orleans, March 9th, 1868.

(Signed) P. W. GOEWEY,
Sp'c'l D'p'ty U. S. Marshal.

Answer.—Filed June 12th, 1868.

United States court, 5th circuit, & district of Louisiana.

W'M J. ALSTON
vs.
W'M E. ADGER, ADM'R OF JOHN ADGER. } No. 5457.

Now comes the defendant, W'm E. Adger, administrator of the succession of John Adger, defendant herein, and for answer to the petition of plaintiff says that he knows nothing of the obligations set forth and described in said petition as the obligation of said John Adger, deceased, and therefore denies that the said Jno. Adger signed, executed, or issued the same. And, further answering, this defendant denies that any payment of interest was made on said obligation by the said John Adger, or by his consent, or by any other person, so as to inter'upt pre-
9 'cription, and therefore this defendant pleads prescription to the said bond or obligation sued on, and avers that the same and the right of recovery on the same has been lost by the lapse of time, and no recovery can be had of the amount of money therein set forth.

And this defendant, furthur answering, saith that if the said obligation was signed by the said John Adger, which is not admitted, but expressly denied, then this defendant pleads and avers that the said obligation was given for the price of sundry negroes, who were at the time of the sale represented to be, and were by the vendors guaranteed to be, slaves for life; that the plaintiff, or the said Mrs. John B. McCall, or the persons through whom she or her trustee, the plaintiff her'in, or the persons through whom she or her claim the ownership of said obligation, were the vendors and guarantors of the title to said slaves; that
10 the said negroes have ceased to be slaves by the acts of sover'ign authority of the United States, and of the States of Louisiana and South Carolina and they are all free; therefore the consideration for which the said obligation was executed has entirely failed and the plaintiff cannot recover.

Tha the plaintiff or the plaintiff's ces*due* qui trust either made the sale of the said slaves for which the said bond was given, or took the same subject to all legal and equitable defences; and for further answer the defendant pleads a general denial.

Wherefore respondent prays for a trial by jury, and that plaintiff's claim be rejected & f costs, &c.

(Signed) SEMMES & MOTT,
Of Counsel for Def't.

Plea of prescription.—Filed February 25th, 1870.

11 United States circuit court for the district of Louisiana.

W. J. ALSTON
vs.
W'M E. ADGER, ADM'R OF JOHN ADGER. } No. 5457.

Now comes the defendant, and for exception, the consent of the court being first obtained to file the same, pleads the prescription of five years to the action of the plaintiff and to his right of recovery in this suit, and defendant, reserving all his other defences, prays that plaintiff's claim be rejected.

(Signed) SEMMES & MOTT,
Att'ys for Def't.

Motion and order.—Extract from the minutes United States circuit court, fifth circuit and district of Louisiana, November term, 1870. *New Orleans, Monday, January 16th*, 1871.

Court meet pursuant to adjournment—present, Hon. E. H. Durell, district judge.

12 W. J. ALSTON
vs.
W. E. ADGER. } No. 5457.

On motion of Clark, Bayne, and Renshaw, attorneys for plaintiffs herein, and upon suggesting to the court that William J. Alston has died since the institution of this suit, and that William J. Alston and Susan Alston have qualified as his executors; that W'm J. Alston survives (Susan Alston having died) and that upon filing duly-certified copies of the will of W. J. Alston and letters of executorship—Messrs. Semmes and Mott, counsel for defendant being present and not objecting—

It is ordered that William J. Alston, executor, be made and recognized as party plaintiff in the place and stead of the late plaintiff herein.

(Copy.)

SOUTH CAROLINA, *Fairfield District:*

In view of the termination of my life at an early period I have concluded to put on record this my last will and testament, to wit:

I give and bequeath to my son, William Samuel Alston, as
13 trustee for the sole use and benefit of his daughter, Marianne K. Alston, and *and* any other children which may hereafter be *be* born to him, or as his, whether their birth should be during my life or after my death—the decisions of the courts to the contrary notwithstanding—all that plantation known as my Kollingshead place, including various tracts: the aggregate being bounded on the northwest by lands of Daniel Hughy, northeast lands belonging to Daniel

Hughy and the estate of the late Dr. T. F. Furman, on the southeast by lands of Nathan Holly, and on the south by Broad River—the said tract containing more or less. And I give also to the said W. S. Alston, as trustee as aforesaid, for the sole and benifet of the said Marianne K. Alston, his daughter, and of any other children which he may have during my life or after my death (for why should I make a distinction between his children, whether born before the present time or at
14 a future period?) all that tract of land lying on Sewee Bay, in Christ-church Parish, Charl'ston district, known as "Flat Feild," inherated by his mother as a part of the estate of James Brown, deceased, containing about 596 acres, bounded on the east by Sewee Bay, north on lands formerly belonging to the late Dr. Jervey, on the west by lands, and on the south by belonging to Mr. Blakely or Blakeney, who succeed Mr. Whelden as owner. Both of these tracts of land are beque'thed to the aforesaid child, Marianne K. Alston, or to her or such other children as the aforesaid William S. Alston may hereafter have, for her or thier benefet during their life, and at her and their death to the survivors of her or them, if there should be a survivor among the children, but if there should be none to the next of kin, provided the said Marianne K. Alston and her brother or brothers and sister or sisters, should she have any, shall have no children, but should she
15 or they have a child or children then at her (the said Marianne K. Alston) or their (the brother or brothers, and sister or sisters) death, such *such* child or children shall have the said lands.

To my wife, Susan P. Alston, and to my children, P. C. Alston, Francis K. Alston, & Jos. K. Alston, I give and bequeath all the rest of my real estate, consisting of the plantation on which I reside, composed of various tracts, the aggregate bounded on the north by lands belonging to Thomas Dawkins, Charles Free, Burr Harrison, Mrs. Martha Dawkins; on the east by lands of the widow Robertsons, formerly belonging to Z. Day and Thomas Bell; on the south by the lands of J. C. Bell & Mary C. Kervey (formerly Mary C. Bell) and the lands of Daniel Hughy, and on the west by Broad River. Also a tract near Shiroh church, of about 25 acres, where I have allowed Mrs. Cowers to live. Also another tract between John McMeekin's and Mr. Ruff's place, formerly
16 belonging to Daniel Long, and bought by me at sheriffs sale, containing about 83 acres. Also the land on which I permit I. German's family to live, containing 152 acres, bounded by lands John Stanton on the N. W., & Mrs. Curry on the N. E., I. McMeekin on the south E., & on the west by lands A. McMeekin.

Reference approved. D. URBAN, *Clk.*

* Also a tract of land, containing nearly 150 acres, on Little River, near Brown's Bridge, bounded by lands of Mr. U. Trapp.* Also a tract of land on the Little Ceder Creek on which the house stands in which I grew up, containing near 800 acres, & bounded by Little Ceder Creek on the east, on the south by Mrs. F. Powel's land, on the west by Mr. Cammack's lands, & on S. W. by *by* lands of the late W'm Robertsons, on the north by lands of Gen'l P. D. Cook & Co. Also a tract of land composed of two surveys, one on west, & the other on the east side of the road leading from Winnsborough to Columbia, in the boundary of which Buffalo church stands, containing some five hundred acres more or less, bounden*d* on lands of Hirmant, Broom, Powell, & Kirkland. Also a tract not far north of Ashford's Ferry, on which Tresvant Ogilby lives as quasi purchaser, but has not paid anything for it: To
17 them and their children which may survive them forever.

All bonds, notes, and other choses in action or assets I give to

them and to my son, W. S. Alston, as trustee for his minor children, one s'are, (except my shares in the So. Ca. R'lr'd, he, W. S. A., having his shares already,) equally. All my horses and mules, cattle & sheep, wagons & tools, and everything on the plantation I give to them for their benefit in common. I constitute and appoint W. S. Alston executors, and my wife, Susan C. Alston, executrix of this my last will & testament.

(Signed) W. J. ALSTON.

In the presence of—
THO'S R. BELL.
W. C. HARRISON.
J. N. HAMMOND.

Letters testimentary.

STATE OF SOUTH CAROLINA,
Fairfield District (now County:)

By James Johnston, esquire, ordinary of the district aforesaid,
18 to all to whom these presents shall come, greeting:

Know ye that on the twentieth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, the last will and testament of William J. Alston, late of this district, deceased, was proven in open court, and approved and allowed of before and by the said court, and the administration of all and singular the goods and chattels, rights and credits, of the said deceased within the State was thereupon granted and committed by the said court unto William S. Alston and Susan I. Alston, named executors in the said will, being first duly sworn well and faithfully to administer and make a full and perfect inventory *of all and singular the said goods and chattels, rights and credits, and to exhibit the same inventory* into the office of the clerk of the court of ordinary aforesaid in order to be recorded on or before the first day of August next, to render a true and just account, calculation, and rec'oning thereof when thereunto required.

Reference approved. D. URBAN, *Clk.*

Witness James Johnston, esquire, ordinary of the said district, the twentieth day of July, in the year of our Lord one thousand
19 eight hundred and sixty-eight, and in the ninety-third year of American independence.

[SEAL OF ORDINARY.] (Signed) JAMES JOHNSTON,
Ordinary.

STATE OF SOUTH CAROLINA,
County of Fairfield:

I, James Johnston, ordinary of the county of Fairfield, in the State of South Carolina, do hereby certify that the court of ordinary is a court of record, whereof I am the judge and the clerk, and that the copies of the last will and testament of William J. Alston, deceased, and the copies of the letters-testamentary of William S. Alston and Susan Alston, who are the duly-qualified executors of said last will and testament, are true copies of the originals now on file and of record in my office.

In testimony whereof I have hereunto set my hand and seal of office, at Winnsboro, South Carolina, the eighth day of January, in the
20 year of our Lord one thousand eight hundred and sixty-nine, and

in the ninety-third year of the independence of the United States of America.

[SEAL.] (Signed) JAMES JOHNSTON, *O. F. C.*

STATE OF SOUTH CAROLINA,
Office of the Secretary of State:

I, F. L. Cardozo, secretary of state of South Carolina, do hereby certify that James Johnston, whose name is attached to the copies of the last will and testemant of W. J. Alston, and of the copies of the letters-testamentary of W. S. Alston & S. Alston, as judge and clerk of the court of ordinary of Fairfield County, is truly the judge & clerk of the court aforesaid of Fairfield County, in the State aforesaid, and that full faith and credit *is* due to his official acts as judge & clerk of said court and of said county.

And I, F. L. Cardozo, secretary aforesaid, do hereby certify that
21 the name of James Johnston aforesaid is written in his proper handwriting, and is the true signature of the said James Johnston.

Given under my hand and the great seal of the State at Columbia, on this ninth day of January, A. D. 1869, and in the ninety-third year of the American independence.

[SEAL.] (Signed) F. L. CARDOZO,
Secretary of State.

Note of evidence.—Filed January 16th, 1871.

United States circuit court, district of Louisiana.

W'M J. ALSTON
vs.
W'M E. ADGER, ADM'R. } No. 5457.

Pl'ff offered bond sued on, and testimony taken under commission.
Defendant objects to all testimony relating to question of prescription or interruption of same or promises to pay.
Depositions admitted.
22 Pl'ff offered testimony, X, & letter attached.
Def't excepts to the ruling of the court.

3 *bills of exception.—Filed January 16th*, 1871.

Circuit court of the United States for the fifth circuit, and district of Louisiana.

W. J. ALSTON
vs.
W. E. ADGER, ADM'R OF JOHN ADGER. } No. 5457.

Be it remembered that, on this 16th day of January, 1871, on the trial of this case, after pleadings had been read to the jury, the plaintiff offered to read in evidence to the jury the following testimony:

1st. The bond sued on with the endorsements thereon, in the following words:

THE STATE OF SOUTH CAROLINA:

Know all men by these presents that we, John Adger, William J. Als-

ton, and James B. McCauts are held and firmly bound unto William J. Alston, trustee of Mrs. John B. McCall, in the *final* sum of nine thousand dollars, good and lawful money of the said State, to be paid unto
23 *to* the said William J. Alston, his executors, administrators, or assigns, which payment well and truly to be made and done, we hereby bind ourselves, our heirs, executors, and administrators for the whole, and in the whole, jointly and severally, firmly by these presents, signed by us and sealed with our seals this fourth day of November, one thousand eight hundred and fifty-six.

Now the condition of the above obligation is such, that if the above-bound Jno. Adger, shall well and truly pay or cause to be paid unto the said William J. Alston, the sum of four thousand five hundred dollars, on the first of January, 1858, with interest thereon from the first of January, 1857, the interest and the whole amount to be paid annually until the principal is paid, then the obligations above written to be null and void; otherwise to remain in full force & virtue.

(Signed)	JOHN ADGER.	[L. S.]
(Signed)	WILLIAM H. ELLISON.	[L. S.]
(Signed)	JAMES B. McCAUTS.	[L. S.]

The said endorsement, on said bond, being—

24 Rec'd on the within bond, Nov. 11*st*, 1857, by the hand of R. L. Bryan, three hundred and fifteen dollars for one year's interest on the same, s'd int. being due on the 4th instant.

(Signed) W'M J. ALSTON.

Rec'd on the within bond as on 4th Nov., 1858, by the hand of R. L. Bryan, three hundred and fifteen dollars, for one year's interest on the same.

(Signed) W'M J. ALSTON.

This bond is entitled to a credit of one year's interest up to 4th of Nov., 1859, paid by John Adger to J. B. McCall, for which he (Mr. Adger) holds a receipt.

(Signed) W'M J. ALSTON.

This bond is entitled to an additional credit of interest due for one year up to 4th Nov., 1860.

(Signed) W'M J. ALSTON.

Rec'd one hundred and fifty-seven dollars and fifty cents, the amount of int. due on the within bond up to July, 1861.

(Signed) W. J. ALSTON.

Rec'd four hundred and seventy-two dollars and 50 cents, interest due up to the 1st Jan'y, 1863, Feb'y 2d, 1863.

(Signed) W. J. ALSTON.

2nd. The testimony of D. Wyatt Aiken, as follows:

25 D. WYATT AIKEN, being sworn, says that he *risedes* in Abbeville Dist., South Carolina, and resided for many years in Fairfield Dist., S. C.; was well acquainted with John Adger & with Rob't A. Herron, esq. Mr. Herron was the agent of John Adger, and transacted much of his business for him for many years, from 1861 or 1862, until the death of John Adger. The letter annexed hereto is in the

handwriting of John Adger, according to the best of my knowledge and belief, and I have frequently seen him write. I am acquainted with much of the contents of this letter; know of the sale of the negroes to Adger. My father bought the McCall plantation, and I lived upon the same for many years. John Adger was in Louisiana, and Mr. Herron attended to his business for him in S. C.

3rd. A letter of John Adger—

COLLINGSBURG, LA., *Jan'y* 22, 1865.

Mr. ROB'T A. HERRON,
Winsboro, S. C.:

I owe the McCaul estate, or B. L. Bryan, some money for negroes. I bought and gave my note. I want to lift my note, and wrote
26 to Mr. McCauts to see Bryan if he would take the money; if so, to sell enough of my cotton to pay the debt, or to trade cotton to him. Try and get it settled up if possible.

(Signed) J. ADGER.

4th. Depositions of Robert A. Herron:

I reside in Fairfield District, South Carolina, about six miles north of Winsboro; my name is Robert A. Herron; I am forty-two years old, and am a planter by occupation. I can't say particularly that I know anything about this bond. I know that plaintiff sold John Adger some negroes about the time of the date of the bond referred to in the proceedings annexed to interrogatories herein propounded, and that said Adger gave his bond to plaintiff for their purchase. The answer given by me to the third interrogatory contains about all I know of the transaction. I refer to the above answers for my knowledge as to this interrogatory. I 'ntertain no doubt that both Mrs. McCall and p*a*lintiff knew that the bond was given for the purchase of slaves. I have stated about all I know of the case of my own knowledge.

Cross-interrogatories:

27 As before remarked in my direct examination, I know nothing of the particular bond sued on, therefore cannot say of my own knowledge anything about the payments endorsed on the bond. I was a near neighbor of John Adger, dead, and was a near relative of his, and somewhat familiar with a good deal of his business. I know the fact that he bought several negroes from plaintiff, as trustee of Mrs. McCall, on a credit, some time in the fall of the year 1856, but, as before stated by me, I cannot say positively of my own knowledge that this is the bond which he gave for their purchase. Mrs. McCall is now dead. She was then living in Winsboro, S. C. The p*a*lintiff was her trustee. I don't know that he occupied any relation of blood to her. I don't think the defendant occupied any relation of blood to her whatever. I have already stated all I know about the bond. I have not seen the defendant since the death of his father, John Adger, dead, and hence never heard him say anything about the bond. Some time in the
28 year 1864, John Adger wrote to me, who was then acting as agent for his business in this particular locality, and requested me to ascertain whether I could pay off the "Bryan" bond, as he termed it, (and which is the same bond now sued on,) with confederate currency, and if I could do so, he wished me to sell some of his cotton then under my control, and apply the proceeds to the payment of the

bond. Upon conference with some parties here I learned that confederate currency would not be received for the bond, and hence did not sell the cotton. The foregoing is about all I know, of my own knowledge, of the case, this 28 Aug't, 1868.

(Signed) R. A. HERRON.

5th. Depositions of James B. McCauts:

I am acquainted with all the parties to this suit, and have known them for twenty-five or thirty years. My name is James B. McCauts, and am a lawyer by profession. I reside in Winnsboro, Fairfield District, South Carolina. I do know all about the bond. I think I drew it up. I signed it as surety for the prin-
29 cipal obliger, the late John Adger, deceased. The bond was given for the purchase of negro slaves, (five in number, I think,) bought by the said John Adger from William J. Alston, as trustee of Mrs. John B. McCall. The consideration of the bond was for the purchase of negro slaves, as answered above. The sale took place in the fall of 1856, as well as I remember. I have stated, in answer to the third interrogatory, that the late John Adger was the purchaser, and William J. Alston, trustee of Mrs. John B. McCall, was the seller. I do not remember at this time the names and ages of the negroes; but I remember well that I was consulted at the time of the sale by the parties, and then thought that the negroes were sold and purchased at a fair market-value. I have already stated, in substance, that the bond was given to the plaintiff, William J. Alston, as the trustee of Mrs. John B. McCall, by the said John Adger, dead, for the purchase of certain negro slaves, and my knowledge is based on the facts as they transpired at the time, and now well remembered by me. Both the
30 plaintiff and Mrs. McCall well know, at the time the bond was given, that it was for the consideration of the purchase of negro slaves. I have stated about all the facts I know of the case.

Cross-interrogatories.

I believe that the annexed document A is a true copy of the bond referred to, and that the endorsement' of credits thereon are correct. The last payment ($472.50) was made by me, as agent and attorney of said John Adger, dead, on the 2nd of Feb'y, 1863, and was subsequently approved by him by his letter to me. I was quite intimate at the time with all the parties, and assisted them in negotiating the trade. Mrs. John B. McCall is now dead, but she then resided in Win'sboro, South Carolina. I am not aware that any blood relationship existed between any of the parties to the trade. I have already stated in full what I know about the bond. The deceased, John Adger, frequently in his lifetime talked with me on the subject of the bond before mentioned; and,
31 as late as May, 1866, wrote me a letter in which he stated that he intended to pay all the debts which he, as principal, owed in South Carolina, if the parties would give him time. This letter is now in my possession. I never heard the defendant, William E. Adger, adm'r of John Adger, dead, say anything on the subject of the bond. My conversations and correspondence were altogether with John Adger, the principal obligor of the bond, who frequently talked to me and corresponded with me about his business matters. I was both his lawyer and confidential friend. The foregoing is my testimony in the case, 28th Aug't, 1868.

(Signed) JAMES B. McCAUTS.

To the introduction in evidence of the endorsements on said bond, defendant, by his counsel, objected, on the grounds following, viz:

1st. They were not signed by the deceased, John Adger, nor was any proof adduced to the jury to establish they were made by his consent, or by his authority, or at his request, except the testimony under
32 commission of McCauts and others and that of D. W. Aiken, heretofore recited, and referred to and excepted to herein.

2nd. They were offered to prove interruption of prescription, which, by the law of Louisiana, cannot be done against a deceased person or his estate, except by the production of the written acknowledgement or promise to pay made and signed by the deceased.

3d. They were offered to show interruption of prescription, which could not be done; the court having already decided the exception of prescription against the defendant, and the question of prescription was not before the jury.

All of which objections were overruled by the court, and the said testimony allowed to go to the jury, on the grounds that the United States courts in Louisiana were suspended from 26th of January, 1861, until the 24th of June, 1863, and that at this time, (and, indeed, prescription was interrupted from 26th January, 1861, the date of the passage of the ordinance of secession of the State of Louisiana, to the 2nd August, 1866, the date of the proclamation of peace,) the bond was not prescribed, and it was immaterial whether
33 the evidence should be read to the jury or not. The whole case was before the jury, the plea of prescription included.

2nd. To the introduction in evidence of the letter of John Adger, dated January 22nd, 1865, defendant, by his counsel, objected, on the ground following:

1st. Because the same was confident'al and addressed to the agent of the writer, and not to the creditor or his agent, and contains the authority to compromise, and not the acknowledegment of a debt, nor the promise to pay a debt, which must be made to a creditor or his agent, and could not be produced as such against a dead man or his estate.

3rd. To the introduction in evidence of that portion of the testimony of R. A. Herron as follows, "John Adger wrote to me, who was then acting as agent for his business in the particular locality, and requested me to ascertain whether I could pay off the "Bryan" bond as he termed it (which is the same bond now sued on) with confederate currency and if I do so, he wished me sell some of his cotton, then under
34 my control, and apply the proceeds to the payment of the bond. Upon conference with some parties here, I learned that the confederate currency would not be received for the bond, and hence did not sell the cotton"—the defendant by his counsel objected on the grounds:

1st. That the same is the proof of an authority to offer a compromise, which does not appe'r to have been exercised, and if exercised, the offer of compromise cannot be offered in evidence, and being evidently a statement of the contents of the letter, already adduced cannot be admitted, being secondary evidence, when the original and best proof is at hand, and

2nd. It is offered to establish an interruption of prescription by parol proof as against a dead man and his estate, which is not allowed by the law of Louisiania.

4th. To the admission in evidence of that portion of the testimony of James B. McCauts as follows: "And that the endorsement' of credits thereon are correct. The last payment was made by me as agent

bond. Upon conference with some parties here I learned that confederate currency would not be received for the bond, and hence did not sell the cotton. The foregoing is about all I know, of my own knowledge, of the case, this 28 Aug't, 1868.

(Signed) R. A. HERRON.

5th. Depositions of James B. McCauts:

I am acquainted with all the parties to this suit, and have known them for twenty-five or thirty years. My name is James B. McCauts, and am a lawyer by profession. I reside in Winnsboro, Fairfield District, South Carolina. I do know all about the bond. I think I drew it up. I signed it as surety for the prin-
29 cipal obliger, the late John Adger, deceased. The bond was given for the purchase of negro slaves, (five in number, I think,) bought by the said John Adger from William J. Alston, as trustee of Mrs. John B. McCall. The consideration of the bond was for the purchase of negro slaves, as answered above. The sale took place in the fall of 1856, as well as I remember. I have stated, in answer to the third interrogatory, that the late John Adger was the purchaser, and William J. Alston, trustee of Mrs. John B. McCall, was the seller. I do not remember at this time the names and ages of the negroes; but I remember well that I was consulted at the time of the sale by the parties, and then thought that the negroes were sold and purchased at a fair market-value. I have already stated, in substance, that the bond was given to the plaintiff, William J. Alston, as the trustee of Mrs. John B. McCall, by the said John Adger, dead, for the purchase of certain negro slaves, and my knowledge is based on the facts as they transpired at the time, and now well remembered by me. Both the
30 plaintiff and Mrs. McCall well know, at the time the bond was given, that it was for the consideration of the purchase of negro slaves. I have stated about all the facts I know of the case.

Cross-interrogatories.

I believe that the annexed document A is a true copy of the bond referred to, and that the endorsement of credits thereon are correct. The last payment ($472.50) was made by me, as agent and attorney of said John Adger, dead, on the 2nd of Feb'y, 1863, and was subsequently approved by him by his letter to me. I was quite intimate at the time with all the parties, and assisted them in negotiating the trade. Mrs. John B. McCall is now dead, but she then resided in Win'sboro, South Carolina. I am not aware that any blood relationship existed between any of the parties to the trade. I have already stated in full what I know about the bond. The deceased, John Adger, frequently in his lifetime talked with me on the subject of the bond before mentioned; and,
31 as late as May, 1866, wrote me a letter in which he stated that he intended to pay all the debts which he, as principal, owed in South Carolina, if the parties would give him time. This letter is now in my possession. I never heard the defendant, William E. Adger, adm'r of John Adger, dead, say anything on the subject of the bond. My conversations and correspondence were altogether with John Adger, the principal obligor of the bond, who frequently talked to me and corresponded with me about his business matters. I was both his lawyer and confidential friend. The foregoing is my testimony in the case, 28th Aug't, 1868.

(Signed) JAMES B. McCAUTS.

To the introduction in evidence of the endorsements on said bond, defendant, by his counsel, objected, on the grounds following, viz:

1st. They were not signed by the deceased, John Adger, nor was any proof adduced to the jury to establish they were made by his consent, or by his authority, or at his request, except the testimony under
32 commission of McCauts and others and that of D. W. Aiken, heretofore recited, and referred to and excepted to herein.

2nd. They were offered to prove interruption of prescription, which, by the law of Louisiana, cannot be done against a deceased person or his estate, except by the production of the written acknowledgement or promise to pay made and signed by the deceased.

3d. They were offered to show interruption of prescription, which could not be done; the court having already decided the exception of prescription against the defendant, and the question of prescription was not before the jury.

All of which objections were overruled by the court, and the said testimony allowed to go to the jury, on the grounds that the United States courts in Louisiana were suspended from 26th of January, 1861, until the 24th of June, 1863, and that at this time, (and, indeed, prescription was interrupted from 26th January, 1861, the date of the passage of the ordinance of secession of the State of Louisiana, to the 2nd August, 1866, the date of the proclamation of peace,) the bond was not prescribed, and it was immaterial whether
33 the evidence should be read to the jury or not. The whole case was before the jury, the plea of prescription included.

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3rd. To the introduction in evidence of that portion of the testimony of R. A. Herron as follows, "John Adger wrote to me, who was then acting as agent for his business in the particular locality, and requested me to ascertain whether I could pay off the "Bryan" bond as he termed it (which is the same bond now sued on) with confederate currency and if I do so, he wished me sell some of his cotton, then under
34 my control, and apply the proceeds to the payment of the bond. Upon conference with some parties here, I learned that the confederate currency would not be received for the bond, and hence did not sell the cotton"—the defendant by his counsel objected on the grounds:

1st. That the same is the proof of an authority to off r a compromise, which does not appe'r to have been exercised, and if exercised, the offer of compromise cannot be offered in evidence, and being evidently a statement of the contents of the letter, already adduced cannot be admitted, being secondary evidence, when the original and best proof is at hand, and

2nd. It is offered to establish an interruption of prescription by parol proof as against a dead man and his estate, which is not allowed by the law of Louisiania.

4th. To the admission in evidence of that portion of the testimony of James B. McCauts as follows: "And that the endorsement' of credits thereon are correct. The last payment was made by me as agent

35 and attorney of said John Adger, dead, on the 2nd of February, 1863, and was subsequently approved by him by his letter to me." "The deceased, John Adger, frequently in his lifetime talked with me on the subject of the bond before mentioned, and as late as May, 1866, wrote to me a letter in which he stated that he intended to pay all the debts which he, as principal, owed in South Carolina. This letter is now in my possession." "My conversations and correspondence were altogether with John Adger, the principal obligor of the bond, who frequently talked with me, and corresponded with me about his business affairs"—on the grounds, 1st. That the same is an attempt to prove by parol that which the law of Louisiana requires to be proved by written acknowledgment or promise, viz, the interruption of prescription as against a dead man or his estate, which cannot be done. 2nd. That the same is an attempt to prove by secondary evidence that which the law requires to be proved alone by the production of the primary evidence of the fact, viz,
36 the written acknowledgment or promise of the deceased debtor to pay the debt, all of which objections to the testimony of Herron and McCauts were overruled by the court and the same allowed to go to the jury, on the grounds as aforesaid, that the bond sued on was not prescribed; that the United States courts in Louisiana were suspended from 26th January, 1861, until the 24th June, 1863, and that this time, and indeed the whole of the time from the 26th January, 1861, to the 22nd August, 1866, being deducted from the period for which prescription ran, and further, that the same was proof of an act of the late John Adger, viz, the payment of part of said bond, which was a fact which by law interrupted prescription against a dead person or his estate, as well as the written acknowledgment or promise of a deceased person to pay a debt.

And before argument of the case by counsel to the jury, and while the case was progressing, and before the evidence was closed, the judge stated in the presence of the jury that the testimony was admissable for purpose of showing the recognition by John Adger
37 during his lifetime of the validity of the obligation sued on.

And thereupon, before the jury retired, the counsel for the defendant excepted to the ruling of the court admitting the testimony aforesaid, and tenders this his bill of exceptions, which is accordingly signed and sealed thus:

(Signed) E. H. DURELL, *Judge.* [SEAL.]

Bill of exception.—Filed January 16th, 1871.

U. S. circuit court.

W. J. ALSTON,
vs.
W. E. ADGER, ADM'R OF JOHN ADGER. } No. 5457.

Be it remembered that, on this sixteenth day of January, 1871, on the trial of this cause, after all the testimony had been offered, and before the case was given to the jury, the said jury then being in the presence of the court, the counsel of the defendant asked the court to instruct the jury that, if they believed from all the testimony adduced, that
38 the obligation sued on and set forth in plaintiff's petition, was given or made for the price of negro slaves, then they must consider the same as invalid, and of no effect, and not to be enforced in a court of law, and that their verdict should be for the defendant.

Which instructions were refused by the court.

And the court thereupon charged the jury that, if the bond or obligation sued on, and offered in evidence to the jury, was given for the price of property at the time the same was executed and delivered, it mattered not whether the property was slaves or a horse, or any other kind of property, and that the subsequent emancipation of the slaves, so sold, did not destroy the validity of the contract, for the payment of the price stipulated, any more than would the death of a horse, or the destruction of any other property, subsequent to the contract for sale and the delivery thereof.

And the judge further charged that the contract was valid and
39 the bond good and valid, and a verdict should be rendered for the plaintiff.

And thereupon, before the jury retired, the counsel for the defendants excepted both to the refusal of the court to grant the charge asked by them, and also to the charge given by the court as aforesaid, and tender this their bill of exceptions, which is according signed and sealed thus:

(Signed) E. H. DURELL, *Judge.* [SEAL.]

Bill of exception.—Filed January 16th, 1871.

In the circuit court of the United States for the fifth circuit, and district of Louisiana.

W. J. ALSTON
vs.
W. J. ADGER, ADM'R OF JOHN ADGER. } No. 5475.

Be it remembered that on this sixteenth day of January, 1871, on the trial of this cause, the exception of prescription was called up and argued, and the defendant, by his counsel, moved the court to dis-
40 miss the suit on the ground that, by the laws of Louisiana, the claim of the plaintiff, as set forth in his petition, was lost and barred by the prescription of five years, according to the statu'e of said State of Louisiana.

No evidence was offered on the exception, but the same was tried on the petition and exception.

Whereupon the court overruled and refused the motion of the defendant's counsel, and decided that the said obligation sued on was not barred by prescription, on the ground that the United States courts in Louisiana were suspended from 26th of January, 1861, until the 24th of June, 1863, and that this time, and, indeed, the whole of the time of the late rebellion or late civil war, viz, from the 26th of January, 1861, when the ordinance of secession was passed by the convention in Louisiana, to the 2nd of August, 1866, when the proclamation of the President of the United States was made, declaring the restoration of peace between the States, should be deducted from and not counted as the time
41 during which prescription ran, and therefore there was not a period of five years between the claim as made in plaintiff's petition, to the service of citation in the suit at bar, say 29th of February, 1869.

To which ruling of the court the defendant, by his counsel, excepted, and takes this his bill of exceptions, which he prays may be signed and sealed, and filed in the records as part thereof.

(Signed) E. H. DURELL, *Judge.* [SEAL.]

Extract from judgment docket, January 16th, 1871.

United States circuit court, fifth circuit, and district of Louisiana, November term, 1870.

NEW ORLEANS, *Monday, January 16th*, 1871.

Court met pursuant to adjournment—present, Hon. E. H. Durell, district judge.

42 W. J. ALSTON
vs.
W. E. ADGER, ADM'R.

The case was called for trial before the court and a jury—

Clark, Bayne & Renshaw for plaintiff; Semmes & Mott for defendant—

When, after argument, the court overruled the exception, and the following jurors were called, and sworn to try the issue:

1. FLORIDAN LANGE.
2. WILLIAM PEMBERTON.
3. EDWARD PITOL.
4. C. W. BOOTHBY.
5. J. F. GRIFFIN.
6. JOHN A. O'BRIEN.
7. E. BARNETT, JR.
8. JNO. AUGISTIN.
9. B. MORAN.
10. ARTHUR THIBAUT.
11. F. A. GONZALES.
12. NENNA OLIVIER.

And the jury being complete, the trial proceeded, and, after hearing the pleadings, evidence, and argument, and receiving a charge from the court, Arthur Thibaut was appointed foreman of the jury, and they retired to consider on their verdict, and after a short absence, they returned into court and delivered the following verdict, viz:

We, the jury, find a verdict for plaintiff for the sum of four thousand and five hundred dollars, with interest, at the rate of 7 % per an
43 num, from the 1st day of January, 1863, until paid.

New Orleans, January 16th, 1871.

A. THIBAUT, *Foreman.*

Whereupon it is ordered that the verdict be recorded, and that, in accordance therewith, there be judgment in favor of the plaintiff, William S. Alston, executor of William J. Alston, deceased, and against William E. Adger, administrator of John Adger, for the sum of four thousand five hundred dollars, with interest, at the rate of 7 % per annum, from the 1st day of January, 1863, until paid, and costs of suit.

Judgment rendered January 16th, 1871.

Judgment signed January 20th, 1871.

(Signed) E. H. DURELL, *Judge.*

Petition and order for writ of error.—Filed January 27th, 1871.

United States circuit court, fifth *district* and district of Louisiana.

W'M J. ALSTON
vs.
W'M E. ADGER, ADM'R OF JOHN ADGER. } No. 5457.

44 To the hon'ble the judge of the circuit of the United States for the fifth circuit, and district of Louisiana:

The petition of William E. Adger, administrator of John Adger, with

respect represents: That, on the 16th day of Jan'y, A. D. 1871, in the above-entitled cause, numbered as aforesaid, a verdict and judgment has been rendered against him by this honorable court, in favor of W'm S. Alston, executor of W'm J. Alston, which was signed on the 20th day of January. 1871.

Your petitioner considers that manifest error has happened, to the great injury and damage of petitioner; and feeling aggrieved by such verdict and judgment, he desires to prosecute a writ of error from the aforesaid judgment before the Supreme Court of the United States.

Wherefore he prays that a writ of error be allowed him from the judgment heretofore referred to, with supercedeas, returnable before the Supreme Court of the United States, in accordance with law, upon petitioner's giving bond in the sum of eight thousand dollars, condi-
45 tional according to law, with W'm E. Adger, J. E. Adger, and J. S. Copes as sureties.

(Signed) SEMMS & MOTT, *Att'ys.*

Order.

A writ of error is allowed in this case, as prayed for, returnable to the Supreme Court of the United States on the first Monday of December next, the petitioner giving bond in the sum of eight thousand dollars, with good and solvent security conditional as the law directs.

(Signed) E. H. DURELL, *Judge.*

Bond for writ of error.—Filed Jan'ry 27th, 1871.

United States circuit court.

W'M E. ADGER, ADM'R OF JOHN ADGER, PL'FF in error, *vs.* W. S. ALSTON, EXECUTOR OF W. J. ALSTON.	No. 5457. Bond for writ of error.

Know all men by these presents that we, William E. Adger
46 administrator of John Adger, as principal, and Joseph E. Adger and W. E. Adger and J. S. Copes, as sureties, are held and firmly bound unto William S. Alston, executor of William J. Alston, and to said W'm J. Alston's estate, in the full and just sum of eight thousand dollars, to be paid to the said William S. Alston, executor of W'm J. Alston, and the said W'm J. Alston's estate, his certain attorneys, executors, administrators, or assigns, to which payment, well and truly be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals and dated this twenty-seventh day of January, in the year of our Lord one thousand eight hundred and seventy-one.

Whereas lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit depending in said circuit court, wherein William J. Alston, executor of W. S. Alston, is plaintiff, and W'm E. Adger, administrator of
47 John Adger, is defendant, judgment was rendered against the said W'm E. Adger, the defendant, and the said W'm E. Adger, administrator of John Adger, having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court, to reverse the judgment in the aforesaid suit, and a citation directed to the said W'm S. Alston, executor of W'm J. Alston, citing and admonishing him

to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of December next:

Now, the condition of the above obligation is such, that if the said W. E. Adger, administrator of John Adger, shall prosecute his writ to effect and *and* answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) W'M E. ADGER, [L. S.]
Administrator,
(Signed) J. E. ADGER. [L. S.]
(Signed) W. E. ADGER. [L. S.]
(Signed) J. S. COPES. [SEAL.]

Sealed and delivered in the presence of—
(Signed) W. Q. BUSH, *J. Peace.*
(Signed) ROBERT MOTT, *as to Dr. Copes.*

48 STATE OF LOUISIANA,
Parish of Bossier:

Personally appeared before me, the undersigned authority, a duly commissioned and qualified justice of the peace in and for said State and parish, William E. Adger and Joseph E. Adger, to me personally known, who being duly sworn, depose and say on oath; that they are severally worth the amount of the within bond, to wit, the sum of eight thousand dollars, after the payment of all their debts and obligations, and that they reside in the State and district of Louisiana.

(Signed) W. E. ADGER.
(Signed) J. E. ADGER.

Sworn to and subscribed before me this 2nd day of April, A. D. 1869
(Signed) M. Q. BUSH, *J. Peace.*

49 UNITED STATES OF AMERICA,
Circuit Court of the United States,
Fifth Circuit and District of Louisiana:

CLERK'S OFFICE.

I, Dominick Urban, clerk of the circuit court of the United States for fifth circuit, and district of Louisiana, do hereby certify that the foregoing 48 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of W'm J. Alston vs. W'm E. Adger, administrator of John Adger, No. 5457 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 7 day of June, A. D. 1871.

[SEAL.] D. URBAN, *Clerk.*

[5-ct. int. rev. stamp, canceled.]

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Dominick Urban, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit, and district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 7 day of June, A. D. 1871.

E. H. DURELL, *Judge.*

[5-ct. int. rev. stamp, canceled.]

50 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or one of you, between W'm S. Alston, executor of William J. Alston, and William E. Adger, administrator of John Adger, in the suit or proceeding entitled W'm J. Alston vs. W'm E. Adger, adm. of John Adger, No. 5457 on the docket of the said circuit court, a manifest error hath happened, to the great damage of the said William E. Adger, administrator of John Adger, as by his complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 27th day of Jan'y, in the year of our Lord one thousand eight hundred and seventy-one.

[SEAL.] D. URBAN,
Clerk of the United States Circuit Court
for the District of Louisiana.

51 (Indorsed:) United States circuit court. No. 5457. W'm E. Adger, adm. of John Adger, versus W. S. Alston, executor W. J. Alston. Writ of error. Filed January 27th, 1871. F. B. Vinot, d'y cl'k.

52 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to William S. Alston, executor of William J. Alston, deceased, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein William E. Adger, administrator of John Adger, is plaintiff in error, and you are defendant, to show cause, if any there be, why the judgment rendered against the said plaintiff, as in said writ mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the Su-

preme Court of the United States, this 27th day of January, in the year of our Lord one thousand eight hundred and seventy-one.

E. H. DURELL, *Judge.*

53 (Indorsed:) United States circuit court. No. 5457. W'm E. Adger, adm'r of John Adger, vs. W'm S. Alston, executor of W. J. Alston. Citation in error.

Marshal's return.

Received Jan. 27, 1871, by the U. S. marshal, and on the 28th day same month and year, served a copy of the within citation in error on the plaintiff herein, through T. L. Bayne, his attorney, by delivering the same to him, said att'y, in person, at No. 36 Camp street, in this city.

New Orleans, Jan'y 28, 1871.

S. W. REED,
D'y U. S. Marshal.

On this 28th day of January, 1871, personally appeared before me, the subscriber, S. W. Reed, and makes oath that he delivered a true copy of the within citation, as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to & subscribed before me.

F. B. VINOT,
D'y Clk U. S. Circuit Court.

(Indorsement on cover:) No. 417. William E. Adger, adm'r of John Adger, dec'd, plaintiff in error, vs. William S. Alston, executor of William J. Alston, dec'd. Louisiana C. C. U. S. Filed 27 November, 1871.